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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 224 (AJN)

5 ALI SADR HASHEMI NEJAD,

6 Defendant.

Oral Argument

7 -----x

8 New York, N.Y.
9 November 7, 2019
11:00 a.m.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the
Southern District of New York

16 BY: MICHAEL K. KROUSE

JANE KIM

17 STEPHANIE L. LAKE

Assistant United States Attorneys

18 -and-

GARRETT LYNCH

19 Special Assistant United States Attorney

20 STEPTOE & JOHNSON LLP

Attorneys for Defendant

21 BY: REID H. WEINGARTEN

22 BRIAN M. HELBERIG

NICHOLAS P. SILVERMAN

23 BRUCE C. BISHOP

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(Case called)

THE COURT: Good morning, everyone. I'll take appearances of counsel, starting with the government.

MR. KROUSE: Good morning, your Honor. Michael Krouse, Jane Kim, Garrett Lynch, and Stephanie Lake for the United States.

THE COURT: Good morning, counsel.

And for the defendant.

MR. WEINGARTEN: Good morning, your Honor. Reid Weingarten, Brian Heberlig.

MR. SILVERMAN: Nicholas Silverman on behalf of Mr. Sadr.

THE COURT: Good morning to counsel and Mr. Sadr.

MR. BISHOP: Bruce Bishop, also on behalf of Mr. Sadr.

THE COURT: Mr. Bishop, good morning as well. Thank you.

We are here for oral argument on a subset of the defendant's motions -- essentially, the motions to dismiss -- and specifically, as I indicated by order yesterday, I will hear argument today on defendant's motions as labeled No. 1, No. 3, No. 4, No. 6, and No. 7. No argument was requested on motions two or five. Argument was requested, is requested on essentially eight, nine, and ten. I don't think ten is labeled "ten," but it's the motion to exclude.

As I was preparing, with the supplemental briefs

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1 coming in late and also out of concern that there was just
2 insufficient time today to do everything, I indicated yesterday
3 that I would hear argument at a later date on those connected
4 motions, which include the supplemental briefing. We can talk
5 about scheduling for that in a moment. Actually, we can talk
6 about it now.

7 What I have available and prefer, but I'll see what
8 the reaction is, is to hear argument on those motions on
9 November 27. That is the day before Thanksgiving.

10 Does that present an impossible barrier?

11 MR. KROUSE: That's fine for the government, your
12 Honor.

13 THE COURT: OK.

14 Mr. Weingarten.

15 MR. WEINGARTEN: Maybe the day before that?

16 THE COURT: I don't think I have it available. No one
17 schedules for the day before Thanksgiving, so it's open.

18 MR. WEINGARTEN: Yes, but the truth is everybody has
19 family stuff, which I'm sure you would anticipate, and if
20 that's the only time you can do it, we will be here. We would
21 certainly prefer if there were alternatives. I mean, any
22 possibility of not next week but the week after that? Any time
23 at all, as late as you wish for us to be here we'll be here, or
24 as early.

25 THE COURT: No. I could do the 25th, which is Monday,

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1 at 3:30 p.m.

2 MR. WEINGARTEN: Yes.

3 THE COURT: Mr. Krouse.

4 MR. KROUSE: Yes, your Honor. That's fine for the
5 government.

6 THE COURT: All right. We'll do that, Monday, the
7 25th, at 3:30 p.m.

8 As indicated, today we've got motions that are
9 numbered one, three, four, six, and seven. I'm going to
10 structure this as follows. I will give each side an hour. If
11 with my questions I take you significantly over an hour, I'll
12 make sure that both sides get equal time. You can make your
13 own decisions about time allocation, but from my perspective,
14 time would be best spent focusing on motions No. 1 and 4. I
15 also think it would be most beneficial to alternate sides per
16 motion so that I can get responses to positions while I still
17 have them in my head, which is not as long as it used to be.

18 With that, who will argue for Mr. Sadr?

19 Mr. Weingarten, generally, would you like to reserve
20 time for rebuttal?

21 MR. WEINGARTEN: Yes.

22 THE COURT: How much total time?

23 MR. WEINGARTEN: I guess we'll do each argument. I
24 can't imagine more than five minutes for rebuttal.

25 THE COURT: All right. So 55 minutes total -- sorry.

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1 MR. WEINGARTEN: Can I make a suggestion about
2 tweaking the schedule? Perhaps it would make the most sense if
3 we did four after this one and three, the nondelegation
4 argument, we put to the last?

5 THE COURT: That's fine.

6 MR. WEINGARTEN: OK.

7 THE COURT: Whenever you're ready.

8 MR. WEINGARTEN: Thank you, your Honor.

9 May it please the Court.

10 I'd like to begin with some prefatory remarks that I
11 think will apply to every word that's uttered on our side
12 today, and they concern sanctions generally and
13 philosophically. We get why they're important in the world.
14 Obviously, if they're alternative to war, that's a wonderful
15 thing. We get sanctions relating to nukes. We get sanctions
16 relating to terror. We get sanctions relating to human rights
17 violations. What is also true, the Iranian sanctions in
18 particular cut a huge swath of utterly benign economic activity
19 and criminalize it. In response to that, every president, I
20 think, except this one, beginning with Jimmy Carter, has said
21 the following:

22 Our only purpose here is to stop the nukes and stop
23 terrorism and stop human rights violations. We understand that
24 there are economic steps taken here that harm people. We want
25 the Iranian people to understand, we're not out to hurt them;

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1 we're only out to discourage the bad behavior. In fact, we
2 support the Iranian people. We do not want to hurt the Iranian
3 people.

4 That's a critical piece to all this, because what
5 we're talking about in this case, from start to finish, is
6 utterly benign activity, the building of low-cost housing in
7 Venezuela after a disastrous flood that has nothing to do with
8 nukes, has nothing to do with terrorism, and has nothing to do
9 with human rights violations and there will never be evidence
10 adduced that will contradict what I just said.

11 In addition, there will be absolutely no evidence of
12 fraud, of rip-off, of cheating, of stealing, none of that
13 whatsoever. So the point I'd like to begin with is this is not
14 a case where we should be stretching and pulling on statutes
15 and regs to find criminality. That would be utterly
16 inconsistent with what every president, what every
17 administration has said about sanctions, from Jimmy Carter.

18 Now let's turn specifically to the charges here.

19 So, what are the charges?

20 The charges, of course, as we know, relate to reg.
21 204, and it talks about services going to Iran. I have found
22 the sanctions to be surprisingly complex. When you put up the
23 regs. with the statutes, with the interpretations, with the
24 definitions, sometimes you can have brain lock.

25 THE COURT: We do our best.

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1 MR. WEINGARTEN: I know.

2 Here, this argument is mercifully simple, because what
3 we're talking about is the most fundamental rule of statutory
4 construction; that is, the plain language. Read the language.
5 If it's obvious, that's what the law is.

6 So first thing I did, I take out my C.F.R., I look at
7 560.204, and throughout that section, we find over and over
8 again the prohibition has to include, and certainly when it
9 comes to services, "to Iran or the government of Iran."

10 THE COURT: Right, and the importance for the most
11 direct argument made by the government is the language you've
12 skipped over, which precedes it, which is the word
13 "indirectly."

14 MR. WEINGARTEN: Of course, but as we articulate in
15 our brief, that does not contradict the requirement of services
16 to Iran. Something has to go to Iran or the government of
17 Iran.

18 THE COURT: Does something include benefit of the
19 services?

20 MR. WEINGARTEN: Well, I mean, obviously, the core
21 argument here is 410.

22 THE COURT: Right. So if you're going to give a
23 speech about what matters is the text, then we should spend our
24 time talking about the relevant textual language.

25 MR. WEINGARTEN: I totally agree.

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1 THE COURT: What does indirectly mean? And does going
2 to Iran include benefits and services going to Iran as has been
3 interpreted by the agency?

4 MR. WEINGARTEN: Indirectly could mean reexportation.
5 Let's just say hypothetically that something was shipped to
6 Turkey and it was left there for a day and then went to Iran
7 with the purpose of it getting to Iran, that would be indirect.
8 That's clear, but that doesn't take away from the import and
9 the meaning "of to Iran or the government of Iran."

10 I mean, the real issue in the first argument we make
11 is the contradiction between 410, the interpretive language,
12 and 204. And 410, the interpretive language, expands the
13 meaning of the prohibition itself. In such a situation, a
14 first-year law student learns that the law, the prohibition
15 itself has to rule. If there's an inconsistency, the
16 interpretation cannot prevail. And if that's the situation,
17 what we have to find, we look to the indictment and see if
18 anything's alleged to have gone to Iran. I think it is that
19 simple. And when we look to the indictment, we find the answer
20 is no.

21 Simply stated, the money that we're talking about --

22 THE COURT: As I understand the allegations, it is
23 that, ultimately, benefit goes to Iranian individuals and
24 Iranian-controlled entities.

25 MR. WEINGARTEN: And we are saying that is not

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1 sufficient. That doesn't make it. That is contrary to the
2 explicit, straightforward language of the reg. I mean, that is
3 the essence of the argument. Under 410, under the interpretive
4 language, that would be covered, and the interpretive language
5 is way broader than the regulatory language.

6 Hypothetically, if a U.S. person, using U.S. banks to
7 move money, built a hospital in Germany, because he was
8 concerned -- let's say he was of Iranian descent -- that the
9 people in Iran were not receiving adequate health care and
10 people from Iran went to that hospital in Germany and received
11 treatment, that certainly would be for the benefit of Iranian
12 people. That couldn't possibly be violative of the sanctions
13 and that would be inconsistent with the language of the reg.,
14 point being the interpretive language is inconsistent.

15 It's broader. It includes, but is broader, than the
16 statutory language -- the prohibitions included in the regs.,
17 the prohibitions have to rule.

18 THE COURT: You made a point about first-year law
19 students. So the first-year law student who wrote the Second
20 Circuit *per curiam* in *Homa* you want me to just treat as dicta.

21 MR. WEINGARTEN: Oh, no. I think you should.

22 My son is actually a first-year law student. I asked
23 him if he'd learned this yet; he hadn't. *Homa* is fine. I'm
24 not suggesting, in a million years, you look at the
25 interpretive language and say: This is garbage; this

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1 irrelevant; this doesn't count. No. Obviously, it can be
2 helpful in certain instances, but in this instance, it doesn't
3 cover the question whether or not interpretive language can
4 expand the meaning, the straight meaning of the reg. itself.

5 THE COURT: We start, then, with what is the meaning
6 of "indirectly" and "to Iran." Those are the key phrases, and
7 you said something hypothetically. I guess let's just ask
8 this. If the service is to the Swiss entity and the next day
9 the money is transferred to an Iranian entity within the
10 geographic location of Iran, is that within the --

11 MR. WEINGARTEN: It could well be, your Honor. I
12 would think we'd need a little more evidence to figure out
13 what's going on, and there is a real issue about services.

14 I mean, the service provided by J.P. Morgan is the
15 service. It's the clearing function. And if there was another
16 action taken, somebody carried the money across the border,
17 we'd have to make an evaluation, but obviously, you're in the
18 ballpark.

19 The point here, and I don't think it's going to be
20 contradicted by my friends seated to my right, nothing went to
21 Iran. The money never went to Iran. That was the whole
22 purpose of the structure. The money didn't go there. If it
23 didn't go there, there's no consistent with the prohibition in
24 204.

25 THE COURT: If the government wants to argue how the

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1 benefits of the services end up in Iran, you would say that's
2 not alleged, that's not in the indictment, but you wouldn't
3 preclude that as an argument under the regulatory language.

4 MR. WEINGARTEN: They do allege that. They do allege
5 it in paragraph 12, and we're saying that's not the crime.
6 That's a statement inconsistent with the crime charged. That's
7 why the count has to be dismissed.

8 THE COURT: OK.

9 Do you want to shift to the evading, structuring,
10 alternative argument?

11 MR. WEINGARTEN: Sure. The evading argument? Is that
12 what you're asking me to do, your Honor?

13 THE COURT: Right. They say even if I'm not persuaded
14 by that sort of direct argument via indirect to Iran and the
15 reliance on 410, then they can still establish a violation
16 pursuant to the prohibition against evading under 203.

17 MR. WEINGARTEN: I think this is exhibit A as to why
18 bureaucrats in the Treasury department shouldn't be drafting
19 our criminal laws. I don't say that in sarcasm or scorn, but
20 that's who did draft this, and here's why it's ridiculous in
21 the extreme.

22 Let's say hypothetically -- and it's not hypothetical;
23 it's this case -- the whole point of the financial structure
24 that was set up was to see to it that money did not go to Iran.
25 Basically, under their theory, that would be evading the

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1 sanctions. That shouldn't be a felony commensurate with
2 obstruction. Somebody should get a medal for that, but more
3 important, the issue is there has to be an evasion of a
4 prohibition. The prohibition is 204. The prohibition of 204
5 carries with it an obligation that the service relates to the
6 territory of Iran. It does not. So the evasion argument is
7 not successful either.

8 THE COURT: So under that theory, 203 just doesn't do
9 anything broader than the prohibition in 204.

10 MR. WEINGARTEN: Well, I mean, it's conceivable.
11 There has to be the violation. There has to be the services to
12 Iran, but, I mean, you raised a hypothetical where the evasion
13 piece could actually apply.

14 THE COURT: Could you spin that out.

15 MR. WEINGARTEN: The instance where the money goes to
16 Turkey, sits there for a day and a half and, then through some
17 other means, goes into Iran and the government could actually
18 prove an intent to accomplish something, meaning evaded
19 sanctions, but it's hypothetically.

20 Let's say there's a factory in Iran and if the factory
21 needs appliances to function properly and the appliances go to
22 Turkey, if the appliances sat there for three days and then
23 went to Iran, you may have an evasion. You may have a
24 violation of the sanctions. But let's say the individuals
25 involved say: No. Because of the difficulty of doing business

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1 in Iran, we're going to leave the appliances in Turkey or
2 actually manufacture the products there and nothing goes to
3 Iran, there's no violation, there's no evasion, there's no
4 avoidance, there's no obstruction. There's no crime.

5 THE COURT: OK. Any other points you want to make?

6 MR. WEINGARTEN: There are two arguments for the first
7 one. There's the 516 argument, so why don't we let the
8 government answer this one, and then I'll do 516.

9 THE COURT: OK.

10 MR. KROUSE: Your Honor, just a couple of points on
11 the facts, and of course, on a motion to dismiss, all the facts
12 alleged in the indictment are assumed to be true. I think it's
13 important here to sort of take a step back and consider the
14 factual circumstances just a little bit.

15 The money that was paid into these shell companies
16 located in Switzerland and Turkey was payment for the
17 construction of housing that was entered into between an
18 Iranian company and a Venezuelan entity, and the payments were
19 made to that Iranian company. So it can't be divorced entirely
20 from the factual circumstances that are alleged in the
21 indictment.

22 You can't just look narrowly at the regulation, and
23 I'll get to how the defense is trying to look past certain
24 language that doesn't support their argument, but just from a
25 factual standpoint, looking at the allegations in the

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1 indictment, the government alleges that an Iranian entity,
2 owned by Iranian people, entered into a contract with
3 Venezuela.

4 THE COURT: By Iranian entity, do you mean owned by
5 Iranian nationals, or what exactly do you mean?

6 MR. KROUSE: Incorporated in Iran and owned by Iranian
7 nationals.

8 THE COURT: So its corporate existence is within the
9 territory of Iran.

10 MR. KROUSE: Yes, and that is Stratus. Stratus is an
11 Iranian company. It's owned by Iranian people. The contract
12 for the project was entered into with Stratus and the
13 Venezuelan entity, which is a governmental entity, to build
14 these housing developments. And all of the payments that the
15 government alleges were sent through U.S. banks, in violation
16 of sanctions against Iran, were sent as payments for the
17 construction of that housing. So it's not as though those
18 payments are completely divorced from activities conducted by
19 an Iranian company. They're part and parcel of an Iranian
20 company's activities in Venezuela.

21 With that background, the government's position is
22 that all of those payments, which were structured in a way to
23 go through U.S. banks in order for Stratus to receive payment
24 in U.S. dollars, and then were sent to shell companies, located
25 in Switzerland and Turkey, are violations of the ITSR.

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1 It can't be that under that, under these regulations,
2 the only thing you have to do to evade or avoid a violation of
3 sanctions is that you create a third-party shell company in
4 another country, incorporate that, and then receive payments
5 into that shell company for activities that were performed by
6 an Iranian company. That would just be an absurd result.

7 THE COURT: Unless someone rightly looks at the
8 regulatory language and says, You know what, it only prohibits
9 services to the geographic region of Iran, so if we set up a
10 company, an entity that isn't that, then the line between
11 evasion and compliance is there, and we've figured out a way to
12 comply by not having the services enter into, as the language
13 of the regs. requires, the geographic area of Iran or to the
14 government of Iran.

15 MR. KROUSE: And your Honor, I think there is a
16 statutory canon of construction that's relevant to that point,
17 which is the statute or the regulation shouldn't be interpreted
18 in a way that would lead to absurd results. And I think that
19 in this situation, allowing an entity to just create a
20 third-party shell company in another country and then receive
21 payments for activities that are performed by an Iranian
22 company in order to get around the sanctions regime would
23 clearly be an absurd result.

24 THE COURT: Let's just talk specifically. Your sort
25 of primary argument, direct argument, 204 argument, is what,

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1 that it is indirectly going to the geographic region of Iran?

2 MR. KROUSE: It's an indirect payment for an entity
3 located in Iran. That's correct, your Honor.

4 THE COURT: And do you have to show, then, to
5 establish it, that ultimately the benefit of the services goes
6 to the entity located in Iran as opposed to the shell company
7 it set up? I mean, would trial follow the money beyond the
8 shell company?

9 MR. KROUSE: No, your Honor.

10 As alleged in the indictment, the money then was
11 transferred to another shell company in the Virgin Islands, and
12 I believe that's where the trail evidentiarily sort of ends.
13 But the government's position is that we do not need to show
14 that the money physically went into an account located in Iran.
15 All the government has to show is that these payments were for
16 economic activity performed by a company located in Iran, owned
17 by Iranian people, and that those payments were made to the
18 benefit of that company or those people, no matter where the
19 money was actually housed in an account. It's possible for
20 companies, as your honor knows, to have accounts in multiple
21 different countries.

22 But if the company that's performing the economic
23 activity is then getting paid through U.S. dollar transactions
24 in violation of the sanctions regime, it doesn't matter if it
25 directly goes into Stratus's bank account in Tehran or if it

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1 indirectly goes into a shell company incorporated by members of
2 Stratus in order to evade U.S. sanctions.

3 THE COURT: Before we get to the evading of sanctions,
4 just trying to keep clean the lines between the 204 and 203
5 argument --

6 MR. KROUSE: Yes, your Honor.

7 THE COURT: -- under 204, it sounds like you want the
8 reg. to read not "to Iran," as defined by geographic location,
9 but "to Iranians." Do I have that right?

10 MR. KROUSE: Your Honor, on that point, "to Iran" I
11 don't believe is explicitly defined. But to Iran, there's no
12 definition that says it's limited to the geographic location.

13 THE COURT: So 560.303, subheading Iran/Iranian, "The
14 term "Iran" means the territory of Iran and any other territory
15 or marine area, including the exclusive economic zone and
16 continental shelf, over which the government of Iran claims
17 sovereignty, sovereignty rights, or jurisdiction."

18 Doesn't that have a physical territorial meaning?

19 MR. KROUSE: The term "Iran" does have a physical --

20 THE COURT: Right. That's the term, and that's the
21 term.

22 MR. KROUSE: But "to Iran," as interpreted by the
23 Second Circuit in *Homa*, says that that provision, 204, should
24 be interpreted to cover services received in Iran or for the
25 benefit of people in Iran.

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1 Clearly, it's the government's position, just focusing
2 on the 204 argument, we have the two parts of the regulation
3 that we argue, indirectly and directly; and then also, under
4 410, the fact that these payments were clearly to the benefit
5 of individuals located in Iran, because they were payments for
6 activities that those individuals or the corporate entity that
7 they owned were performing in Venezuela.

8 THE COURT: Would your argument be that this would fit
9 under the language "directly," or are you relying on
10 "indirectly"?

11 MR. KROUSE: Your Honor, we're not relying necessarily
12 on "indirectly," because I believe, under the word "directly,"
13 as interpreted by 410 and as interpreted by the Second Circuit
14 in *Homa*, this payment was a direct payment to the benefit of
15 individuals in Iran. But alternatively, an argument would be
16 that it's indirectly going to Iran or individuals in Iran,
17 because it's going to a third country. So those are, in a
18 sense, alternative arguments.

19 THE COURT: And just analytically, is your primary
20 contention that I'm bound by *Homa*'s reliance on 410 to
21 interpret this to include where the benefit of such services is
22 received in Iran?

23 MR. KROUSE: Your Honor, 410 is part of the regulatory
24 framework. It's an interpretive provision. It's also duly
25 authorized by the Treasury department. It's part of the

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1 regulatory framework.

2 THE COURT: It's an agency interpretation of 203.

3 MR. KROUSE: Yes, your Honor.

4 THE COURT: Sorry. 204.

5 MR. KROUSE: 204, yes, your Honor.

6 As you know, in *Homa*, the Second Circuit relied on it,
7 so the government's position is that that is part of the
8 regulatory framework, it makes sense to rely on it in
9 interpreting 204 to the extent that there's ambiguity.

10 THE COURT: And what about the rule of lenity, if I
11 think that there is ambiguity?

12 MR. KROUSE: The first argument is that we don't
13 believe there's ambiguity here. It's clearly within the
14 heartland of what the Iranian sanctions were meant to prevent.

15 To the extent that there is some ambiguity, the agency
16 interpretation of the language, we believe, would control as
17 well as the Second Circuit's reliance on that language.

18 THE COURT: And just so I understand, how would you
19 define "to Iran" in 204, since you seem not to have the
20 territorial definition I read to you in mind?

21 MR. KROUSE: Your Honor, for the word "Iran," that's
22 obviously a territorial definition, but under 410, where it
23 says that it's also for the benefit of individuals residing in
24 that territory, the government's view, in response to your
25 Honor's question about whether we need to trace the money

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1 directly to an account in Iran, is that we don't have to do
2 that, because a corporate entity that is incorporated in Iran
3 or an individual living in Iran can obviously have bank
4 accounts outside of Iran that are for that person or that
5 entity's benefit. And so under the overall regulatory
6 framework, under the plain language of 410 and 204, there's no
7 requirement that the government trace the money physically to
8 the geographic entity of Iran.

9 THE COURT: You would have to trace the benefit to an
10 entity in the geographic territory of Iran.

11 MR. KROUSE: Yes, your Honor.

12 THE COURT: All right. Do you want to move to the
13 evading argument?

14 MR. KROUSE: Yes, your Honor.

15 An alternative argument, and it's charged in the
16 indictment, is that, under 203, the regulatory framework also
17 criminalizes efforts to avoid or evade Iranian sanctions under
18 the ITSR. There's another statutory construction or rule of
19 construction that you're not to assume that different words are
20 redundant or read out of the regulation. Here, that regulation
21 says that it's a violation to directly violate U.S. sanctions
22 against Iran. It's also a violation to avoid or evade those
23 sanctions. And here, the government's indictment alleges very
24 sophisticated efforts on the part of the defendant and others
25 to structure these transactions in a way that would evade U.S.

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1 sanctions.

2 I'll give a couple of examples.

3 There are emails showing that the defendant purposely
4 and knowingly took the word "Iran" out of the entity that was
5 operating in Venezuela, or tried to; made sure that none of the
6 correspondence with the correspondent banks in New York
7 referenced Iran, all of which shows, in the government's view,
8 knowledge that these transactions were violations of the
9 sanctions laws, and by taking out that language, the parties
10 were attempting to evade U.S. sanctions. It's plain reading of
11 the regulation.

12 Furthermore, the creation of these shell companies in
13 Switzerland and Turkey are also efforts to evade U.S. sanctions
14 or as part of that same effort to hide who really is receiving
15 the benefit of those funds. Those funds are clearly payments
16 for construction activities performed by an Iranian company.
17 They're going into bank accounts that are controlled by those
18 same people that just happened to be in a different geographic
19 country, and they're going through the U.S. correspondent banks
20 on the false pretense that those payments have nothing to do
21 with Iranian activity, when they clearly did.

22 So even if the 204 argument wasn't sufficient, which
23 the government's position is it is, 203's broader conception of
24 liability to include evasion and avoidance would clearly cover
25 this activity.

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1 THE COURT: If I agree with you on 203, do you still
2 need resolution of 204 for trial?

3 MR. KROUSE: Your Honor, we would want resolution on
4 both grounds to be able to argue both grounds to the jury. So
5 I guess the answer is yes, we would like resolution on both.

6 THE COURT: All right. Thank you.

7 Should we pick up 516?

8 MR. KROUSE: Thank you, your Honor.

9 THE COURT: I dream in C.F.R. numbers now.

10 MR. WEINGARTEN: Just 30 seconds to respond to two
11 points, if I may?

12 THE COURT: Yes.

13 MR. WEINGARTEN: In 2012, there was a big change, and
14 the whole regimen was altered, and that's why we believe that
15 our conduct under 516 was completely legal from inception until
16 2012. Also, some changes since 2012, but what does not change
17 is the language about "to Iran or the government of Iran."

18 560.427, "exportation, reexportation, sale or supply
19 of financial services to Iran or the government of Iran," not
20 to the benefit of people. They know how to write. They're
21 smart people in the Treasury. When they want to talk about
22 nationals, they know how to do that. They did it with Cuba.
23 This language could not be clearer, and the definition in 203
24 could not be clearer. And it survives the change in 2012.

25 In terms of, quote, shell companies, there's a

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1 pejorative sense to that. The suggestion is they were only in
2 existence to receive the money in connection with construction.
3 That is not true. Clarity was a trading company and did a
4 great number of things in addition to being involved in the
5 Venezuela project.

6 THE COURT: Why aren't those arguments to be made to
7 the jury?

8 MR. WEINGARTEN: I just wanted to clear the record.
9 That's all.

10 THE COURT: OK.

11 MR. WEINGARTEN: And Stratus Turkey also did projects
12 above and beyond Venezuela.

13 OK. 516.

14 We argued that, under 516, what we did in Venezuela
15 was perfectly legitimate, authorized by the sanctions *ab*
16 *initio*, since 2006, and one way of being comfortable with that
17 is to look at 516. And in the beginning years of the life of
18 this alleged conspiracy, 516 talked about clearing services and
19 talked about four categories and said the U.S. depository
20 institutions are --

21 THE COURT: Slow down.

22 MR. WEINGARTEN: You know the language.

23 THE COURT: I've got it right here.

24 MR. WEINGARTEN: OK. So four separate categories of
25 conduct, and one, of course, being the U-turns, and No. 3,

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1 underlying transaction is not prohibited.

2 We believe, for sure, that the conduct in Venezuela
3 was authorized by both. Interesting thing, by the way, 2006 --
4 no dispute from the government -- that when this illegal
5 conspiracy began, the conduct was completely legal. As I was
6 taking the Acela up here, it occurred to me, I wonder if the
7 grand jury heard, were they instructed, that at the beginning
8 of this conspiracy, when this illegal agreement was launched,
9 that the conduct contemplated was 100 percent authorized under
10 U.S. law? And I would suggest -- I would be eager to hear from
11 the podium today whether or not the grand jury was so
12 instructed -- they should have been.

13 Moving to 2008.

14 For whatever reason, and we'll get to that reason in
15 two seconds, the first category's taken out.

16 Why?

17 Well, we have an answer from the Treasury, and the
18 answer from the Treasury is in the briefs of the parties, and
19 it is clear that the emphasis was there was a belief in U.S.
20 law enforcement that Iranian banks were misbehaving. Iranian
21 banks weren't checking money laundering. Iranian banks were
22 engaged in SWAPs, meaning exchanging Iranian currency for
23 dollars with no underlying transactions. From the words of
24 OFAC, from the words of the United States Treasury, it seems
25 clear, beyond peradventure, what motivated the change in 2008

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1 was not a desire to criminalize everything and anything having
2 to do with any Iranian anywhere but to get hold of the conduct
3 of the Iranian banks.

4 So what did they do?

5 They eliminated U-turns. And I should add U-turns and
6 the clearance function of United States banks is important to
7 the United States. The U-turns and the clearance process
8 wasn't put in place for Iran. There's a benefit to the United
9 States for the dollar and U.S. depository institutions being
10 the center of the universe. So the point of all this, there
11 was an intelligent decision made in 2008: U-turn gone. But
12 the other three categories remained, pure and simple. So if it
13 was illegal under the third category in 2006, it was legal in
14 2008 as well. And the only argument they have is that: Oh,
15 no, no. The Treasury meant the only thing that survived, after
16 we took away the U-turn exception, No. 1, charitable
17 institutions, like remittances.

18 Well, remittances are important. It's not surprising
19 that that was on the mind of the Treasury. There are a bunch
20 of Iranian kids in the United States who go to school, and they
21 rely heavily on remittances. And why in the world would you
22 want to punish them? So it's not unusual that that would be
23 highlighted in the regs. But what kills the government's
24 argument is language, the plain language of the reg. And the
25 plain language of the reg. that kills them, "such as." Such as

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1 doesn't mean only this, and "e.g.," for example, doesn't mean
2 only this.

3 So again, we're at pure English language. We're just
4 reading English language here.

5 THE COURT: Let me ask. On your theory, looking at
6 that same provision, what does noncommercial add? Am I right
7 under your theory, whether it's commercial or noncommercial
8 remittance, it wouldn't change the meaning. Right? You're
9 saying this just highlights one example.

10 MR. WEINGARTEN: I think there are different kinds of
11 remittances.

12 THE COURT: Right.

13 MR. WEINGARTEN: I think that's what they're referring
14 specifically to remittances here, and I think there was a big
15 controversy here. I may have to check this. I may supplement
16 what I'm saying here. I'm understanding that from family, it's
17 one thing. If it's not family, if it's a business, it's
18 another thing.

19 THE COURT: OK.

20 MR. WEINGARTEN: But it's specific to remittances. It
21 has nothing to do with building low-income housing in
22 Venezuela. It doesn't change. That language cannot possibly
23 change the third paragraph of the original 516.

24 THE COURT: OK. But you're saying the only question
25 is whether the transfer arises from an underlying transaction

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1 that is not prohibited by this part.

2 MR. WEINGARTEN: Yes.

3 THE COURT: OK, so it wouldn't matter. And are
4 commercial remittances prohibited?

5 MR. WEINGARTEN: I'm not an expert on remittances, so
6 I'm not sure.

7 THE COURT: All right.

8 MR. WEINGARTEN: I'm sure I have people here who are.

9 THE COURT: Move on.

10 MR. WEINGARTEN: Again, it sort of goes, I think,
11 right to Judge Chin's words. I think the government's 516
12 argument was stronger in Judge Chin's case than this one. It
13 was a closer call, and he found ambiguity. This is 100 percent
14 clear to us. This is the plain reading, "such as" and "for
15 example."

16 THE COURT: Which case are you talking about?

17 MR. WEINGARTEN: The *Banki* case.

18 THE COURT: Oh, in *Banki*.

19 MR. WEINGARTEN: I think Judge Chin wrote the opinion.

20 THE COURT: Thank you.

21 MR. KROUSE: Your Honor, on this point the defense
22 doesn't cite any authority, and I don't think there is any, for
23 this reading of that one part, where it says, "arose from an
24 underlying transaction not prohibited by this part," to mean
25 that because it was a housing project in Venezuela, it was not

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1 prohibited by this part. It's sort of a very circular argument
2 that the defense is trying to make. They're saying because
3 these transactions didn't violate the sanctions regime, 516
4 authorizes them. But as we just went through, in the
5 government's view, under 203 and 204, these transactions did
6 violate the sanctions regime, so they were not authorized by
7 this part.

8 It's clear from the context of 516 that when the
9 U-turn license provision was revoked in 2008, the intent was to
10 leave behind certain types of transactions that relate to
11 noncommercial remittances from family members, humanitarian
12 aid, things of that nature, not these kinds of commercial
13 transactions.

14 THE COURT: How do we know what was carved out?

15 MR. KROUSE: Well, we know, your Honor, from just
16 looking at what it was before 2008, what it was between 2008
17 and 2012, and then what it became afterwards.

18 Also, we know from the statement of what Treasury was
19 doing when they made that revocation of the U-turn. So the
20 government's view is, and we've conceded this, that under the
21 U-turn provision, these kinds of transactions were allowed. In
22 2008, that was revoked.

23 THE COURT: What's the relevance of the fact that the
24 conspiracy begins in 2006, as alleged in the indictment, when
25 it, by everybody's concession, was permissible?

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1 MR. KROUSE: The overall conspiracy began in 2006.
2 There is no significance, in the government's view.

3 First, every transaction that the government goes
4 through, the 15 transactions that amount to \$115 million, all
5 of those transactions well postdate the revocation of the
6 U-turn license. They also are well after *Homa* and all the
7 other interpretive decisions that we've been talking about
8 today.

9 As for the start date of the conspiracy, that start
10 date is when the memorandum of understanding was entered into
11 between Stratus and Venezuela, so it's a logical starting point
12 for the conduct. It's when the agreement was made.

13 THE COURT: But at that time they're conspiring to
14 comply with the U-turn license.

15 MR. KROUSE: Possibly, your Honor, but the conspiracy,
16 the overall conspiracy to evade U.S. sanctions began, then,
17 when that agreement was made to start the construction project,
18 and then the manner in which the payments were made --

19 THE COURT: So in 2006, they were conspiring to evade?

20 MR. KROUSE: Your Honor, the government doesn't have
21 to prove that at the moment of the date that's alleged in the
22 indictment the full understanding of how the illegal activity
23 would be conducted had to be agreed to. The conspiracy can
24 evolve over time, and it's the government's view that, here,
25 where we're alleging all of the transactions postdating the

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1 revocation of the U-turn provision, that while this conspiracy
2 was in effect and the majority of the time it was in effect,
3 was after the U-turn provision was revoked, Mr. Sadr and other
4 members of the conspiracy worked together to structure these
5 transactions in a way that would either evade U.S. sanctions or
6 violate the sanctions directly or indirectly.

7 The government's view is that there's no significance
8 from a legal perspective on the fact that in 2006, that the
9 start date of the conspiracy is before the revocation of the
10 U-turn provision, especially here, where all of the
11 transactions that make up the bulk of or the entirety of the
12 illegal activity postdated that.

13 Just with respect to Mr. Weingarten's arguments about
14 516 itself --

15 THE COURT: Yes.

16 MR. KROUSE: -- there's no authority at all cited in
17 the defendant's brief for this very novel reading of 516, where
18 it appears that there be some circularity to the interpretation
19 of the regulation, where you're saying that there's no
20 violation because these transactions were not prohibited.

21 THE COURT: The language is the transfer arises from
22 an underlying transaction that is not prohibited.

23 MR. KROUSE: Yes.

24 THE COURT: You could see why they'd make the
25 argument. If you stopped the sentence there, that argument

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1 prevails.

2 MR. KROUSE: But the transaction was prohibited under
3 all the other provisions that we've been discussing here today.

4 THE COURT: Right. If you persuade me on that, that's
5 the end of this argument.

6 MR. KROUSE: Yes, your Honor.

7 THE COURT: OK.

8 MR. KROUSE: Thank you, your Honor.

9 THE COURT: Thank you.

10 MR. WEINGARTEN: We'll go to four, your Honor?

11 THE COURT: Sure.

12 MR. WEINGARTEN: Four, obviously, relates to bank
13 fraud, 1344.

14 Fundamentally, there are three questions that need to
15 be addressed here:

16 One, was there a misrepresentation made by the
17 defendant?

18 Two, did the defendant get or seek to get any of the
19 bank's money either that it owned or had custody of?

20 And then three, did the defendant defraud the bank by
21 exposing it to a risk of tangible economic harm?

22 I'm sure at this point the Court is well aware of the
23 facts. We're talking about routine, automated, and
24 instantaneous clearing transactions to process the transfer of
25 U.S. dollars from one foreign bank to another. There are a

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1 zillion a day at each of these banks. I'm exaggerating, but
2 not by much. I think they get about \$9 a pop when they're done
3 in seconds. We included an exhibit of the Treasury department
4 that describes these transactions, and Judge Chin describes the
5 transactions well in the *Grain Traders* case that we cite in our
6 brief.

7 Let's start with the first question. Was there
8 misrepresentation?

9 I think it's useful to start with the words of Judge
10 Blackmun in the *Williams* case from the early '80s, which I
11 actually remember. He basically said a check cannot be a false
12 statement for a simple reason. Technically speaking, a check
13 is not a factual assertion under the law, and therefore, it
14 cannot be characterized as true or false. 1344 was amended as
15 a result, and there are about a zillion -- again, I'm
16 exaggerating, but not by much -- cases about whether or not in
17 check-kiting cases or bad-check cases it's a false statement to
18 a bank.

19 But the point here, and all of those cases involved
20 defendants doing very bad things but claiming it's not 1344
21 stuff; it should be state stuff. We're saying nothing of the
22 sort here. There are no statements made by the defendant, much
23 less false statements, in this. They're wire transfers, and
24 there's not a false statement, not a false word in those wire
25 transfers.

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1 THE COURT: The argument is it's an implied
2 misrepresentation to a non-Iranian entity.

3 MR. WEINGARTEN: OK. I get that.

4 And there, I think we go to the duty to disclose. Is
5 there a duty on the part of the defendant to do more than he
6 did? And there we turn to the cases that we cite -- the
7 *Autuori* case, a Second Circuit case, and obviously, you start
8 with, Well, is he a fiduciary? Does he have some obligation
9 under the law to provide information to the recipient of
10 whatever statements he's making even if he's making statements?
11 And of course, he's not even a customer, so there's no
12 fiduciary responsibility there.

13 The inquiry doesn't stop. I recognize that. We have
14 to turn to *Pirro*, another Second Circuit case, which I think is
15 really important. And *Pirro* basically says in a situation like
16 this, when we're talking about an omission, there must be a
17 known duty to disclose. Even more important than that, *Pirro*
18 says you have to include in the charge what that known duty is.
19 And of course, there is no such inclusion in the indictment in
20 this case.

21 Now, the government will say, and they're correct, of
22 course, that *Pirro* is a tax case. And we go back to *Cheeks* and
23 *RadLAX* from the Supreme Court, and what are the obligations
24 there? And not just tax cases, where there must be a known
25 duty to disclose for there to be an omission. In an extremely

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1 complex statutory or regulatory regimen, that duty applies, and
2 there can't be a more complicated statutory or regulatory
3 regimen than here.

4 THE COURT: And what about *Morgenstern*; was there a
5 fiduciary duty there?

6 MR. WEINGARTEN: No. He was a customer who was
7 ripping off -- I mean, he's just one of the many cases, where a
8 fraudster is trying to rip off someone else, but not the bank.
9 So the argument there is --

10 THE COURT: -- that he's just handing checks.

11 MR. WEINGARTEN: Yes.

12 THE COURT: And he's put the bad checks in with good
13 checks.

14 MR. WEINGARTEN: Well, as I recall the decision, the
15 Second Circuit said there were affirmative misleading steps
16 taken by *Morgenstern*, which certainly don't exist here.

17 In all of the cases -- and we cite a lot and they cite
18 a lot -- there is underlying fraud. There's underlying theft.
19 Somebody's trying to rip off somebody, and that's just not
20 happening in this case, which goes to element two.

21 Is there any evidence of our client seeking to obtain
22 property from the bank that's not his own? And the answer is
23 no.

24 And here, we think that *Shaw* and Justice Kagan's
25 effort to separate 1344(1) and 1344(2) -- it's complicated. I

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1 think I've always assumed that the two parts of 1344 overlap.
2 Maybe they do, maybe they don't.

3 THE COURT: They're separated by an "or."

4 MR. WEINGARTEN: Yes.

5 But I don't think that matters in this context. The
6 point with Justice Kagan's answer is, for purposes of 1344(2),
7 there may or may not be a need to prove an intent to rip off
8 the bank, but you need misrepresentations. You need to deceive
9 somebody. This is a fraud statute, after all. And there will
10 never be evidence in this case that our client sought to rip
11 off anyone, much less the bank or the bank's customer. We're
12 talking about money that he was entitled to. That separates
13 this case from all the other cases that we and they cite.

14 What this really comes down to is the right to
15 control. I mean, at the bottom, on this 1344 charge, the
16 government will have to say -- the only place for them to go --
17 that somehow, some way, the information that was not provided
18 to them put them at risk.

19 THE COURT: Yes.

20 MR. WEINGARTEN: And we obviously go back to what
21 obligation did our client have to provide information to the
22 bank? Was he supposed to pick up the phone and call Jamie
23 Dimon and say: Jamie, by the way, my dad's in Iran. He has a
24 complicated relationship with the government, and I just wanted
25 to let you know?

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1 I'm being silly, but the point is well-taken. What,
2 beyond the wire transfer, was called upon either by the law or
3 any other reason for our client to do with J.P. Morgan?

4 So in terms of the right to control, I think the
5 *Binday* and *Finazzo* cases sort of lay it out. I think it is
6 palpably clear, and Judge Droney, I think, lays it out and
7 gives the history of the 20 years of right-to-control cases and
8 concludes the common thread of these decisions is that
9 misrepresentation or nondisclosure of information cannot
10 support a conviction under the right-to-control theory, unless
11 those misrepresentations or nondisclosures can or do result in
12 tangible economic harm.

13 And by the way, we followed *Lebedev*. We know that was
14 your case and we read Judge Droney's opinion in *Lebedev*. I
15 don't think Judge Droney moved an inch.

16 THE COURT: I don't think *Lebedev* was cited in the
17 papers.

18 MR. WEINGARTEN: I read it on the Acela.

19 THE COURT: I was surprised, since it has bearing on
20 both the risk issue --

21 MR. WEINGARTEN: I agree, I agree, but I don't think
22 Judge Droney's opinion moved an inch in terms of the
23 requirement for tangible economic harm.

24 So what does that mean for purposes of this case? And
25 then we have to turn to Judge Winters's words.

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1 THE COURT: Are you going to say why *Lebedev* doesn't?

2 MR. WEINGARTEN: Sure. We're talking about Bitcoin.
3 We're talking about fundamentally illegal conduct. We're
4 talking about real potential harm to the bank. We're talking
5 about the bank advancing funds, and we're talking about actual
6 misrepresentations that were found in the middle of the trial,
7 actual misrepresentations by the defendant to the bank. I
8 think those would be just the start.

9 THE COURT: That's on the misrepresentation point, but
10 in terms of the right to control, the disguised transactions
11 had a higher risk of being fraudulent. Right? I'm just
12 looking at the language of the opinion. The institutions
13 processing those transactions would be more likely to process
14 and approve them because they weren't aware of the risk.

15 MR. WEINGARTEN: I think they were far more likely to
16 be out money than J.P. Morgan, and I think they were also far
17 more likely to be in trouble because of their dealings with an
18 inherently illegal entity, which is nothing even remotely like
19 what's here.

20 I think in all of these cases we have to go to Judge
21 Winters's words in *Nkansah*. They're oft repeated. The actual
22 exposure of a bank to losses can't be unclear, remote, or
23 nonexistent. And here, the potential risk to the banks -- in
24 fact, with all due respect to my friends on the right, I don't
25 think that argument passes the laugh test. They cite the

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1 French bank *BNP Paribas* and *HSBC*. You know from personal
2 experience about the French bank participating and admitting to
3 participating in the massacre in Darfur.

4 THE COURT: You spend your time following all of my
5 cases.

6 MR. WEINGARTEN: Seems to be a wise thing to do.

7 THE COURT: It's getting harder and harder to keep
8 track.

9 MR. WEINGARTEN: *HSBC* -- I know from my own personal
10 experience what their travails have been -- not even within
11 light years of the situation facing these banks in this cases.
12 The government is holding them out as potential victims here.

13 In the history of man -- and again, I'm being
14 facetious, but in the history of OFAC work, no bank situated
15 the way they're situated, dealing with someone who is not a
16 customer or a client, dealing with a transaction like the ones
17 in this case, faced exposure.

18 They cite the MasterCard situation. MasterCard was
19 dealing with SDNs, entities that had been designated as people
20 you shouldn't be dealing with. There's nothing even remotely
21 like this. And what happened to MasterCard? I don't know.
22 Maybe someone will tell me that they've been sanctioned or
23 they've been indicted.

24 THE COURT: That point that you just made, isn't that
25 the government's argument, that the bank would know they can't

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1 deal with Iranian entities, and that's the fraud?

2 MR. WEINGARTEN: In MasterCard, they were dealing with
3 people who were on a list. All you have to do is check the
4 list with your customer and you'll find out you shouldn't be
5 dealing with them. That's the potential risk to MasterCard.
6 There's nothing even remotely like that in this case. They're
7 wire transfers.

8 What was he supposed to do? And what's the bank
9 supposed to do?

10 The answer's nothing. And there's a section we quote
11 in 516, where there's a distinction between financial
12 institutions and their responsibilities with clients and
13 customers, where they have an obligation to see whether or not
14 they are being consistent with the law and with sanctions. And
15 here, we're talking about financial institutions not dealing
16 with customers. Completely different situation than the ones
17 cited by the government.

18 So the point is under any analysis of the situation,
19 we don't have any chance whatsoever of these banks getting in
20 trouble under known law, and as a result, there can't be a
21 right-to-control theory here.

22 One more thing I would like to mention is the *Davis*
23 case -- I also read that on the *Acela* -- Judge Preska's
24 opinion. That's a recent case, 2017. It's one where she
25 reversed the conviction in a matter before her, and I think the

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1 point here is she talks extensively about the right to control,
2 goes through the entire history, and the benefit-of-the-bargain
3 piece is important here. I don't think that's terribly
4 relevant to this case, but what she also points out is that the
5 government did not charge the right-to-control theory in *Davis*
6 that they pursued. She found that to be wanting, and that was
7 part of the reason she reversed the conviction. The
8 no-right-to-control allegation or theory is articulated in the
9 indictment. So under *Davis*, that is not kosher.

10 THE COURT: OK. Thank you.

11 MR. KROUSE: Your Honor, at the outset, I'll note that
12 most of these arguments that defense counsel is making are
13 arguments that they can make to the jury. The question here is
14 whether the government has alleged sufficient facts to support
15 the charge in the indictment and the elements of those
16 offenses, and I think the answer to that question is plainly
17 yes.

18 This is a bank fraud charge and a conspiracy to commit
19 bank fraud charge. I'll divide up the categories the same way
20 defense counsel did, in the same order.

21 He, first, talked about misrepresentations. The
22 misrepresentations here are alleged that the defendant
23 misrepresented to the bank that these payments were not for the
24 benefit of an Iranian entity, and that is a misrepresentation.

25 THE COURT: Well, which allegations make that

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1 misrepresentation? Where in the indictment are the allegations
2 that he misrepresented to the bank that there would be no
3 benefit to an Iranian entity?

4 MR. KROUSE: Your Honor, I'll take a step back.

5 It's throughout the indictment that those steps were
6 taken by the defendant, so various steps that I outlined
7 earlier -- changing the name of the entity, taking Iran off of
8 certain transmittal letters. Things of that nature were
9 intended by the defendant and his coconspirators to
10 misrepresent the nature of the payments that were being made
11 through these U.S. correspondent banks.

12 The indictment itself, the charge for bank fraud and
13 conspiracy to commit bank fraud, alleges all of the elements of
14 that offense; incorporates in the conspiracy the overt acts
15 that were previously listed with respect to the IEEPA counts.
16 And then in Count Three of the bank fraud, which is paragraph
17 22, it incorporates paragraphs 1 through 13 and 16 of the
18 indictment, which outlined a lot of the conduct that I'm
19 referring to. And then within paragraph 23, there's, toward
20 the end, a "to wit" clause, "inducing U.S. financial
21 institutions to conduct financial transactions on behalf of and
22 for the benefit of the government of Iran and Iranian entities
23 and persons using money and property owned by and under the
24 custody and control of such financial institutions, by
25 deceptive means."

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1 That's a clear statement of what the government's
2 charge in this case is. It's explained in a very detailed
3 fashion in all of the overt acts that were under Count One --
4 Count Two, excuse me -- yes, Count One, the IEEPA conspiracy.
5 And those misrepresentations regarding the nature of those
6 payments and where those payments were destined to were
7 material representations.

8 The government will prove at trial, through a witness
9 from the bank, that had the bank known that these payments were
10 for a construction project run by an Iranian entity and for the
11 benefit of that entity and for the owners of that entity, it
12 would not have approved those transactions.

13 THE COURT: But how is that different than the
14 check-kiting schemes, where, presumably, someone from the bank
15 would testify had I known there wouldn't have been sufficient
16 funds from this check coming in, I wouldn't have allowed the
17 withdrawal of the funds?

18 MR. KROUSE: Under *Morgenstern*, your Honor, it's clear
19 that the request for funds can be a material misrepresentation
20 if certain facts are --

21 THE COURT: The request for funds alone can't be, but
22 you need misrepresentation in addition.

23 MR. KROUSE: Yes, your Honor, and the government will
24 prove that at trial, that there were these additional
25 misrepresentations by the defendant, the transmittal letters,

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1 the changing of the name, the incorporation of these shell
2 accounts, or whatever you want to call them, accounts in other
3 countries, were all part of this overall scheme to trick these
4 U.S. banks into providing the defendant with U.S. dollars in
5 violation of the sanctions regime and also in violation of the
6 bank fraud statute.

7 The point of whether it's a misrepresentation or a
8 material misrepresentation, the government will prove that at
9 trial, and we've adequately alleged, in very great detail, that
10 element of the offense in the indictment.

11 As to the defendant's point about the money, and I
12 guess the statement was that there's nothing that's going to
13 show that the defendant wasn't entitled to the money, the money
14 is the dollars. The banks are parting with U.S. dollars that
15 they have in their possession, and the defendant is not
16 entitled to those U.S. dollars under the government's view of
17 the case. He purposely misled the banks in order to obtain
18 those U.S. dollars, which is what he and his coconspirators
19 wanted, and that's property of the bank they're turning over.

20 No matter how the defendant wants to define how a
21 correspondent banking relationship works, it's pretty clear.
22 It's pretty obvious and not that complicated. A request for
23 payment is made from Venezuela up to the U.S. into these shell
24 accounts in Switzerland and Turkey, and the U.S. banks are
25 parting with U.S. dollars and sending them to those accounts.

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1 And that, in the government's view, would clearly satisfy the
2 element of the bank actually providing property to the
3 defendant.

4 On the point of risk of economic harm, this, again, I
5 believe, is an issue for trial. It's a factual issue. The
6 Second Circuit has said in another case, *Rossomando*, 144 F.3d
7 197, pin cite 201, n. 5 (2d Cir. 1998) that the harm was the
8 denial of the bank's right to control their assets by depriving
9 them of information necessary to make discretionary economic
10 decisions. And here, this kind of bleeds a little bit into the
11 material misrepresentation, but the bank's witness will testify
12 that had they known what this money was for and where it was
13 going, they would not have approved the transactions.

14 There is risk -- real risk -- to the bank in approving
15 transactions that violate Iranian sanctions. There are
16 reputational risks. There are risks to the business. There
17 are risks that the bank is going to have to retain counsel, be
18 investigated whether they were knowingly facilitating these
19 violations of U.S. sanctions. All of that will be proved up at
20 trial. It's alleged in the indictment, and the government's
21 view is that's enough.

22 THE COURT: Mr. Weingarten makes an argument that you
23 don't, in the indictment, lay out a right-to-control theory.
24 What's your response to that?

25 MR. KROUSE: Your Honor, it's not necessary in the

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1 indictment to lay that out. It's only necessary in the
2 indictment that the government allege a violation of each of
3 the elements of the offense, and here, we've done so with great
4 detail and a lot of particularity, and there's no requirement
5 that the government describe in the indictment every theory
6 under which the government would be able to prove those
7 elements at trial.

8 THE COURT: Thank you.

9 MR. KROUSE: Thank you, your Honor.

10 THE COURT: Mr. Weingarten.

11 MR. WEINGARTEN: I'm prepared to do nondelegation. I
12 would just request a ten-second response?

13 THE COURT: Sure. You get rebuttal too.

14 MR. WEINGARTEN: I know. I'm looking at my watch. I
15 don't want to overstay the visit.

16 I listened closely to what my friend had to say, and I
17 said there are three issues here. One, was there a
18 misrepresentation? Two, did my client try to get any of the
19 bank's money he wasn't entitled to? And three, did he put any
20 of the banks at risk, and the answers couldn't be more obvious
21 to all three. There was no misrepresentation by him to the
22 bank. We're talking about information that the bank had. All
23 true.

24 In terms of him getting money that he was not entitled
25 to, that's what bank fraud charges are all about. No scintilla

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1 of evidence.

2 Finally, there's no response to the point in the world
3 that we live in these banks were not put at risk at all.

4 Nondelegation.

5 Obviously, I understand what the Second Circuit has
6 ruled here, but they left us a little room, and I would just
7 like to touch --

8 THE COURT: I never read footnotes.

9 MR. WEINGARTEN: All right. Boy, did you cut my legs
10 off.

11 THE COURT: Go ahead.

12 MR. WEINGARTEN: Emergency.

13 THE COURT: It's there. The issue is there.

14 MR. WEINGARTEN: OK.

15 Emergency. How in the world can it be that we have a
16 40-year emergency, under any definition of emergency with Iran?
17 It's just silly. It's silly to argue it. Iran is a
18 misbehaving country for sure.

19 THE COURT: The contention is that I should conclude
20 it's silly regardless of what Congress and successive
21 administrations have done.

22 MR. WEINGARTEN: If the sanctions regime is not
23 authorized by law, the prosecution goes. And if there's no
24 emergency, the prosecution goes.

25 And every president, Jimmy Carter didn't like the

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1 hostage-taking. Ronald Reagan had his beef. Bill Clinton was
2 crazy about Salman Rushdie, who was not as great a writer as
3 everyone seems to think, and that, of course, is beside the
4 point. W., or at least his vice president, was accusing the
5 Iranians of 9/11. Are you kidding?

6 Actually President Obama had a different view. He
7 lifted many of the sanctions, and he was the primary person in
8 the life of this conspiracy to say the whole point of these
9 sanctions is not to punish innocent Iranians who are doing
10 benign things. And of course, now we have President Trump,
11 who's taken the opposite.

12 Shifting justifications. Emergency has a clear
13 definition. Under the law and also in common parlance.
14 There's no emergency here.

15 And the constraints. The Second Circuit, in *Dhafir*,
16 said one of the reasons we'll save this and we won't find
17 constitutional violations, are there real constraints on the
18 Executive? Yes, of course Congress passes law. Yes, we
19 understand that the world is complicated when sometimes the
20 Executive branch has to do things, but you can't just dump
21 law-making responsibility on the Executive branch. And we feel
22 pretty good about this one because the Executive has
23 constraints. Are you kidding?

24 The Executive reporting meticulously and carefully to
25 Congress? No, that's not happened. And Congress has been even

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1 more derelict. The point to that, the law's not been followed.
2 We're not talking about an emergency, as defined by law, and
3 we're talking about constraints that have been completely
4 ignored.

5 About the delegation, obviously, what is the
6 intelligible principle here? That the Iranians are bad and
7 that GS-15s on Fifteenth and Pennsylvania can take out their
8 pencils and write whatever they want and that becomes federal
9 criminal law? That just can't be. It just doesn't feel right.

10 Obviously we want you to toss the indictment because
11 of this. What's our second choice? I'm not sure. I mean, I
12 think it's so obvious. I think 50 years from now, when legal
13 scholars look back at the prosecutions of these completely
14 benign economic activities by Iranians, they're going to say
15 how did we let this happen? Again, I'm not sure what to do
16 about it other than to make this argument.

17 THE COURT: Thank you.

18 Mr. Krouse.

19 MR. KROUSE: Your Honor, I'm not going to necessarily
20 engage on the argument that the other branches of government
21 have wrongly decided that there's an emergency. I'll just note
22 that both Congress and the President have made that conclusion,
23 but the Second Circuit has stated that IEEPA is not an
24 unconstitutional delegation of authority to the President under
25 the case *Dhafir*.

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1 Accordingly, the defendant's motion on this point
2 should be denied.

3 THE COURT: It seems like the one space where I have
4 to particularly opine is the question that was left expressly
5 open in the footnote in *Dhafir*, whether Congress's failure to
6 consider and vote on a joint resolution as to whether the
7 emergency declared should be terminated, I'm not sure I see in
8 your papers a response to that argument.

9 MR. KROUSE: It's possible we didn't expressly respond
10 to that, your Honor. I read the footnote. It seems that
11 Congress, under the statute itself, has the power to terminate
12 the national emergency by a concurrent resolution. They
13 haven't done so. Different administrations have periodically
14 updated the executive order for the emergency to account for
15 new facts, and so on this record and on this motion from the
16 defense, there's not enough for the Court to decide that
17 Congress has been somehow derelict in their responsibility to
18 check the President's authority in this area.

19 THE COURT: Just structurally, the statute requires
20 not later than six months, and the end of each six-month period
21 that the house of Congress shall meet to consider a vote on a
22 joint resolution to determine whether the emergency should be
23 terminated.

24 Congress legislated that, right? That's 1622(b). And
25 they haven't, right?

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1 MR. KROUSE: I believe not, your Honor.

2 THE COURT: It was just a question. What is the
3 government's argument as to the meaning of that agreed-upon
4 failure?

5 MR. KROUSE: The meaning of it --

6 THE COURT: Or remedy for it.

7 MR. KROUSE: No, I don't believe there would be any
8 individual remedy to that decision by Congress not to follow
9 its reporting obligation. It's, as you said, structural within
10 the statute and it's within the statute. Congress has the
11 authority to terminate the President's authority here. They've
12 chosen not to do so, and so under that framework, the law is in
13 effect and there's no individual remedy to challenge it.

14 THE COURT: Thank you.

15 Anything further?

16 MR. SILVERMAN: Yes, your Honor.

17 THE COURT: Go ahead.

18 MR. SILVERMAN: I'll address pretrial motions 6 and 7
19 very briefly, your Honor. I think they go best together, so
20 I'll try not to take up too much of the Court's time with this.

21 Mr. Krouse was talking about bank fraud when he
22 mentioned it, but the question here is whether the government
23 has alleged sufficient facts to support the charge in the
24 indictment, and at the core of motions 6 and 7 is really the
25 fact that it's not what the government has alleged. It is

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1 about what the grand jury has alleged and whether they have
2 alleged sufficient facts to make out the charge against
3 Mr. Sadr so that he can prepare for trial.

4 At this point, your Honor, we would ask that the Court
5 dismiss certain counts, and then, in the alternative, we
6 request striking a surplusage and a bill of particulars.
7 That's why I'm going to try to address these quickly and
8 together and just hit the primary areas where we have something
9 to add to our briefs.

10 The first would be the law of Count Two.

11 Count Two alleges, and I have it on page 24, that
12 Mr. Sadr conspired to violate the entirety of the ITSR, the
13 entirety of the IFSR, and seven different statutes in IEEPA.

14 Now, originally, I had the idea that I'm sure every
15 first-year law student or junior associate has to print out
16 those statutes. It's over 200 regulations, so suffice it to
17 say that this gives the government incredible ability to roam
18 about at trial, to try to save charges beyond the charges that
19 the grand jury actually intended to bring.

20 THE COURT: In the alternative to dismissal, you want
21 to know specifically what regulatory violations will be proved.

22 MR. SILVERMAN: That's correct, your Honor, and it
23 would be consistent with your order in the *Murgio* case, which I
24 understand is another name for the *Lebedev* case; or consistent
25 with, to cite a different case, the Northern District of New

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1 York's order in *Mango*, where they required specific regulations
2 under the Clean Water Act.

3 No. 2 is something that we've spent most of today
4 talking about, which is the export recipient. Who received an
5 export that Mr. Sadr either exported himself or caused to be
6 exported?

7 Today, almost all of the discussion -- in fact, all of
8 the discussion, and I've listened carefully to both the Court
9 and the government -- has been about Iranian individuals
10 receiving an export and about Stratus Iran receiving an export.
11 If you look to the indictment, most of it does say that, but
12 paragraphs 19 and 23 allege with no specificity whatsoever that
13 the government of Iran received exports, and that is an
14 entirely different case; that if Sadr had been accused of that,
15 he does have a right to know what the specific acts underlying
16 that offense are. That's from both Rule 7 and the Supreme
17 Court, in *Russell v. United States*, and, frankly, the Sixth
18 Amendment, which says that he has the right to know the nature
19 and cause of the allegations against him.

20 Now, the third essential fact is misrepresentations
21 defense, but we have spent quite a bit of time talking about
22 that, so I will skip right along to the fact that the
23 government, in its response, in the omnibus opposition, doesn't
24 address a lot of these arguments. But what it does do four
25 times in those three pages is say that we're looking for

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1 evidence in our motion for a bill of particulars and to dismiss
2 for lack of specificity.

3 I want to be very clear. We are not looking for the
4 evidence the government will use to prove these charges. We
5 are just looking for the charges Mr. Sadr is facing at trial
6 and to dismiss where the grand jury failed to allege those
7 charges with sufficient specificity.

8 THE COURT: I'm sorry. This final point that you're
9 making, is that just a summary point? It's eluding me how it's
10 different.

11 MR. SILVERMAN: It is just a summary point that
12 applies to all three, your Honor. I think there are only two
13 places where we are moving to strike surplusage that I haven't
14 already touched upon.

15 First is the use of "among others," and I'd like to
16 clarify our reply brief. We mistakenly misread the indictment.
17 It does not incorporate all of the uses of "among others." It
18 incorporates the use of among others in paragraph 16. So while
19 we do think that "among others" should be struck from the
20 indictment in general, because they're words that don't have
21 any actual function other than to expand the charges beyond
22 what the grand jury returned. If the Court chooses to apply
23 the distinction between charging paragraphs and means
24 paragraphs, it would be just the "among others" in paragraph 16
25 that we seek to strike.

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1 The more important issue in terms of striking and from
2 my perspective is paragraphs 1 through 5 that give the
3 government's history of the ITSR and the legal prohibitions
4 that it opposes, and I think there are a number of reasons to
5 strike this, a few of which we've already touched upon. But
6 the one thing I wanted to address is how the government defends
7 it.

8 They say that because IEEPA requires willfulness,
9 these introductory paragraphs will provide the jury with
10 information and evidence as to when, through what means, and
11 why prohibitions on exports to Iran --

12 THE COURT: Let me just ask you about timing. A lot
13 of courts defer on this. The jury, if they get the indictment
14 at all, will get it at the point of deliberations. Why not
15 deem this premature, see what plays out at trial and then
16 address the question then.

17 MR. SILVERMAN: Because, your Honor, regardless of
18 what evidence is offered at trial, your Honor, those five
19 paragraphs serve no purpose other than to be evidence and
20 information for the jury. And it's one of the first-year law
21 student points, that an indictment is not evidence. And if
22 that is the purpose, then it should be struck, just like it was
23 in *Groos* and *Fishenko*.

24 The one thing that I wanted to touch on in those two
25 cases, the government's distinction is that those talk about

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1 terrorism and this does not. It talks about an unusual and
2 extraordinary threat that Iran poses to United States national
3 security. If that is not an oblique reference to terrorism,
4 I'm not entirely certain what it is. But Groos dealt with four
5 pages of allegations being struck. There was one sentence that
6 talked about terrorism, so that case was not talking about
7 terrorism either.

8 THE COURT: The government's papers noted an openness
9 to discussions on these issues and attempting to resolve some
10 of them. Has that process happened?

11 MR. SILVERMAN: No, your Honor. We have not engaged
12 in any sort of conference since the motions were filed.

13 THE COURT: All right. Thank you.

14 MR. SILVERMAN: Thank you.

15 THE COURT: Mr. Krouse.

16 MR. KROUSE: Yes, your Honor. Maybe I'll take them
17 out of order and do surplusage first, your Honor.

18 The government's position is, as the Court noted,
19 this, in our view, is premature. There's no reason at this
20 point to decide whether certain phrases should be struck from
21 the indictment. In the event the jury does get the indictment,
22 the Court would have the benefit of all the evidence having
23 been presented and then both parties and the Court could engage
24 meaningfully on whether there were certain phrases that should
25 be in the indictment that goes back to the jury.

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1 Just on the specific points, "among others" is a
2 pretty standard phrase that indicates it's not an exhaustive
3 list, and that's been endorsed by various courts, including the
4 *Kassir* decision in this district.

5 The paragraphs-1-through-5 background regarding IEEPA,
6 there's no inflammatory language in there, in the government's
7 view. It's just a pretty pedestrian description of what led to
8 these various statutes and regulations being put into effect.

9 THE COURT: It does sound in emergency and threat,
10 doesn't it?

11 MR. KROUSE: That's the background of these charges.
12 And the arguments will be made at trial, because otherwise the
13 question will be, Well, who cares about these transactions?
14 The transactions are relevant because they're a violation of
15 the law.

16 THE COURT: What arguments will be made at trial?

17 MR. KROUSE: That these transactions were part of a
18 scheme to evade Iranian sanctions, so the fact that the word
19 "Iran" comes up --

20 THE COURT: Right. But are you going to go into the
21 sort of legislative history or any of the political history
22 around Iran sanctions?

23 MR. KROUSE: Your Honor, it's a little premature for
24 us to know exactly how the government's going to present the
25 case.

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1 I will note that there are going to be certain expert
2 witnesses that the government will propose that could be the
3 subject of some motions *in limine* briefing, but with respect to
4 this motion that's before the Court now, whether to strike
5 surplusage, A, I think it's premature to make that decision; B,
6 there's nothing unusual about a speaking indictment in this
7 district that lays out the history of how certain statutes and
8 regulations were put into effect.

9 THE COURT: "The situation in Iran constitutes an
10 unusual and extraordinary threat to the national security,
11 foreign policy and economy of the United States and declared a
12 national emergency," etc., etc.

13 I guess I had assumed, when you indicated in the
14 briefing that you'd have some meet-and-confer, what might be
15 agreed upon.

16 MR. KROUSE: We're happy to have those conversations,
17 your Honor. I think it's, like I said, premature to fully
18 commit. We haven't had any conversations with the defense, but
19 we're open to those conversations. I don't think it's clear
20 that the indictment's even going to the jury, so it's sort of a
21 moot point or not a ripe issue at this point. That's the
22 government's position. We are open to having conversations.

23 THE COURT: Why don't you have a conferral, see if you
24 can narrow the issues on the motion to strike, and put in a
25 letter in a week's time. I want to give you quick resolution,

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1 and I've been working to get myself in a position to do that,
2 but within a week's time, let me know if this has been narrowed
3 at all.

4 MR. KROUSE: Yes. The only hesitation, your Honor, is
5 that part of this will require more understanding of what
6 evidence we'll be presenting to the trial.

7 THE COURT: It's not going to be that hard to think
8 through whether you're going to put on evidence that the
9 situation in Iran constitutes an unusual and extraordinary
10 threat to national security, foreign policy, etc.

11 MR. KROUSE: But they're seeking to strike all five
12 paragraphs.

13 THE COURT: That's why I'm saying confer and see if
14 you can narrow it.

15 MR. KROUSE: OK.

16 THE COURT: If you can't, you can't, but you'll try.

17 MR. KROUSE: OK. Sounds good, your Honor. When would
18 you like that letter?

19 THE COURT: A week's time.

20 What about the specific regulatory violations?

21 MR. KROUSE: Those are in the indictments, your Honor,
22 page 26.

23 THE COURT: Nothing beyond that?

24 MR. KROUSE: Those are the regulations and statutes
25 that we're alleging were violated here. That's on page 26 in

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1 the parenthetical after the charge in Count Two.

2 THE COURT: Paragraph 21?

3 MR. KROUSE: 21, yes, your Honor. The parenthetical
4 under that.

5 THE COURT: So limited to, for regulatory violations,
6 203, 204, 205.

7 MR. KROUSE: Within Count Two, yes, your Honor, the
8 IEEPA conspiracy count.

9 THE COURT: OK.

10 MR. KROUSE: Just on the broader point of the
11 specificity, this is a very detailed indictment, much more
12 detailed than the vast majority of indictments that are before
13 the Court. I think the legal framework is that the grand jury
14 need only allege in the indictment the elements of the crime,
15 and that, combined with the discovery produced to the
16 defendant, puts them on adequate notice of how to defend the
17 charges in this case.

18 I don't think there's any real argument that the
19 defense is in the dark about what the government is alleging.
20 It's in a very detailed, 34-page indictment with 50-some overt
21 acts that go into quite a bit of detail about what Mr. Sadr and
22 his coconspirators specifically did. And then detailed
23 discovery has been provided to the defense. They're well on
24 notice of what the government's charges are in this case and
25 are adequately informed in order to prepare their defense.

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1 Under that framework, that motion, motion No. 6,
2 should be denied.

3 THE COURT: Let me hear from counsel on this point.

4 The government has, as I understand it, represented
5 that with respect to Count Two, the regulatory violations are
6 limited to 203, 204, and 205. That's what you're looking for,
7 right?

8 MR. SILVERMAN: Your Honor, that is most of the relief
9 that we are looking for. We would like the remaining sections
10 to be struck, and in addition to striking those from the
11 indictment, there are no specific facts underlying the alleged
12 violation or the purportedly alleged violation of 205, which is
13 about reexports to Iran, I believe.

14 And the one response that I would put in is that
15 nobody in this room has examined more discovery than me. I am
16 still very much in the dark as to how the government of Iran
17 received an export from Mr. Sadr.

18 THE COURT: All right. Let me ask about that point.

19 Mr. Krouse, 205 and the allegations with respect to
20 the government of Iran as opposed to "to Iran."

21 MR. KROUSE: Your Honor, the indictment alleges the
22 specific involvement of the government of Iran with respect to
23 the agreement to have this project happen in Venezuela, so
24 those are specific allegations -- that the government of Iran
25 engaged in a foreign-policy relationship with Venezuela;

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1 entered into a memorandum of understanding -- and then Stratus
2 was charged with building those houses. So the government of
3 Iran is involved in the facts alleged in the indictment.

4 All that's required in an indictment, again, I'll say,
5 is a statement of the elements of the offense. There's a lot
6 of detail here. The motion to strike surplusage is not ripe.

7 THE COURT: I'm focused on the bill-of-particulars
8 question, although I suppose we've dealt with that with respect
9 to the specific regulatory violations. You've represented they
10 won't go beyond 203, 204 --

11 MR. KROUSE: Your Honor, 410, there's an interpretive
12 provision, but as far as what the defendant violated, yes,
13 those are set forth in the indictment. As every indictment
14 from our office usually is, it will say what statute and
15 regulation we believe is violated in that charge, and we did
16 that here.

17 THE COURT: OK. With respect to reexportation for the
18 government of Iran, what allegations go to that? I understand
19 that the government of Iran is involved in the underlying
20 construction project and MOU, but I'm not sure if the
21 government is alleging that there is reexportation for the
22 government of Iran.

23 MR. KROUSE: Your Honor, it's in the indictment. It
24 was returned by the grand jury as written. The government
25 hasn't fully decided what its evidence will be and what its

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1 presentation will be. That's why we keep saying it's not ripe
2 at this point. The motion that the defense is filing goes to
3 the face of the indictment and whether it's alleged, with
4 particularity, the offenses charged. The government's position
5 is yes, it has. If, after the presentation of the evidence,
6 there's a renewed motion to strike certain portions of the
7 indictment, if the indictment is going to the jury, I feel that
8 it can be addressed at that point. But to ask the government
9 to lay out its entire -- not to exaggerate and say entire, but
10 any trial strategy having to do with what the government's
11 going to present at trial, at this stage, with this motion, I
12 don't think is required in order to oppose the motion.

13 THE COURT: OK.

14 Anything further?

15 MR. KROUSE: Not from the government.

16 MR. HEBERLIG: There's one more issue for us, your
17 Honor.

18 THE COURT: Go ahead.

19 MR. HEBERLIG: This relates to the search warrant
20 issue, which I understand we're going to argue in a couple of
21 weeks, but it's sort of a preserving-the-status-quo issue.

22 We've learned a lot from the government's most recent
23 brief, and as we now understand their position, they only
24 intend to use at trial the 420 pertinent documents. But we
25 also know that there are potentially as many as a dozen people

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1 within the District Attorney's Office and the U.S. Attorney's
2 Office who have access to the full returns. There are three to
3 four to five databases and document-review platforms that have
4 the entirety of the search warrant returns in them.

5 We would like an order or at least a representation
6 from the government that until the Court resolves our motion,
7 no member of the District Attorney's Office or the U.S.
8 Attorney's Office will access the raw returns for any reason.
9 I believe based on the position there's absolutely no reason
10 for anyone to be looking at anything beyond the 420 documents.
11 We will argue in two weeks that those should be suppressed as
12 well, but in the meantime, we don't want anyone else rummaging
13 through Mr. Sadr's plainly irrelevant personal emails.

14 MR. KROUSE: The government will make that
15 representation, your Honor.

16 MR. HEBERLIG: Thank you.

17 THE COURT: Glad I could be of help. And just so you
18 know, you're allowed to speak to each other without me in the
19 room.

20 MR. KROUSE: Your Honor, it occurs to me that there is
21 one other issue outstanding that may be premature in light of
22 the motion to suppress the documents, but our understanding
23 from the privilege/filter team is that the defense is asserting
24 privilege over certain of the 420 documents. So in the event,
25 just thinking ahead, if the Court decides not to suppress the

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1 420 and then the case is going to proceed to trial with those
2 documents still in evidence, I take it it would be prudent to
3 sort of set a schedule for resolving any privilege disputes,
4 which this team is walled off from, but I think the order in
5 which it would happen is the defense would file a motion or
6 something asserting a privilege over certain documents and then
7 our privilege review team would respond.

8 THE COURT: And the request is to set that schedule
9 now.

10 MR. KROUSE: Yes, your Honor.

11 THE COURT: Fine with me.

12 MR. HEBERLIG: I think we can do it expeditiously
13 after the motions here. We're talking about a very small
14 universe of the 420 documents.

15 MR. KROUSE: How many, your Honor, if we could
16 inquire?

17 MR. HEBERLIG: I will inquire. Hang on one moment.

18 There are three documents that are spousal
19 communications. I'd be surprised if the government's filter
20 team tries to argue that they're not.

21 MR. KROUSE: And there's no attorney-client privilege
22 being asserted?

23 MR. HEBERLIG: No.

24 THE COURT: All right. Maybe you can work this out
25 too. I'd be delighted. And you don't need to wait for me to

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1 try and do that. I don't think we need a schedule for that at
2 this point.

3 You'll confer on whether you can narrow on the
4 surplusage issue at all. I'll hear from you on that in a week.

5 Include in that discussion, Mr. Krouse, whether
6 there's any narrowing on the government of Iran-related
7 allegation, and I'll hear from you in a week and then I'll
8 resolve what remains of that.

9 I have my briefing on the suppression and related
10 motions. We have our time for oral argument, and you'll try to
11 work out the limited spousal privilege issues, I presume, in
12 advance of that oral argument so you can let me know if we need
13 any briefing schedule on the theory that suppression is denied.

14 MR. KROUSE: Thank you, your Honor.

15 Anything else?

16 Thank you, counsel. Motions are submitted.

17 We're adjourned.

18 (Adjourned)
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25